1954

File No. S. Kanara 4/54

Legal DEPARTMENT

Examined E BRANCH

Subject:— In the Court of the Civil Judge (S.D.), Karwar

Suits 1 Kanara

C. S. No. 205 of 1953

Nagappa Yegu Naik of Ankola ---- Plff.

1 The State of Bombay
2 The Village Panchayat Ankola } ---Defts

For a declaration that S. No. 160 of Shedgri in Ankola Taluka is ~~held~~ held by him on a permanent tenure and not on temporary basis, and that the order passed by the Collector of Kanara for the plaintiff's eviction from the said land is illegal, ultra vires etc

29/6/54

File No. S Kanara 4/54

Std. Scott. Slip 24-B

4/1954

Below monthly return for the month of Oct. 1953

from the District Government Pleader of Karwar

No. 22765/E.
Office of the
Remembrancer of Legal Affairs,
Bombay Castle 12th Nov. 1953

Forwarded with compliments to the Collector of Kanara with a request that the report and papers regarding Suit No. x 205/53 mentioned in the return may be submitted at an early date in accordance with rule 118 of the Law Officers' Rules.

By order

for Remembrancer of Legal Affairs.

HSP/20/6

Letter

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To

The Secretary to Government,
Revenue Department, Bombay.

No. O/C. 360. Karwar, 2-12-1953.

Subject: Lands: Kanara -- S.No.160 of Shedgeri
Disposal of ... Civil Suit in respect
of

REVENUE DEPARTMENT
File No. LND 3453
-7 DEC 1953
Serial No B 143503

Civil Suit No.205 has been filed against Government and in that connection I am submitting my report under rule 118 of the Rules for the Conduct of Legal Affairs of Government.

(i) No.of Suit : O.S.205 of 1953.

(ii) Date of filing of Suit. : 7-10-1953 in the Court of the Civil Judge, Senior Division Karwar.

(iii) Names of parties : Nagappa Yegu Naik, agriculturist, aged 38, residing at Ankola ...Plaintiff.

Vs.

1. The State of Bombay.

2. The Village Panchayat, Ankola ...
Defendants.

(iv) Value of the claim : Rs. 2000/-

(v) Date fixed for first hearing : 26-11-1953.

(vi) Notice under section 80 C.P.C. has been given on 7-4-1953 and was received on 8-4-1953.

2(a). Copy of the plaint which is in English is sent herewith.

(b) List of documents produced with the plaint and their copies and translations are sent herewith.

(c) It is proposed to defend the Suit.

The facts of the case are as below:

Plaint:(para 1):

It is true that Shedgeri S.No.160 was a waste land and is assessed at only 0-6-6. A rough sketch

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of the land is at page 29 of file No.I(marked 'A')
The other facts of para 1 are admitted.

Para 2:

Admitted.

Para 3:

On 4-6-1949, the plaintiff applied for granting this plot on a temporary lease (vide page 1 in File No.IV marked 'B'). The same day, the plot was granted to him by the Mamlatdar. At page 11 of the file, there is an agreement (marked 'C'), passed by the plaintiff agreeing to hold the plot upto 31-3-1950 and to cultivate it on condition that a strip of 10' wide should be left open on one side as a public path. This lease was sanctioned only for 1949-50. Thereafter on 7-6-1949, the plaintiff applied that this plot should be given to him on permanent basis (vide page No.1 of file No.I marked 'D'). The plaintiff did pass an agreement for one year. This agreement has, therefore, been obtained in a special form prescribed for the purpose. The grant is not under rule 52 but under rule 55 L.R.Rs. Of course, this agreement refers to his first application dated 4-6-1949 and it was passed on 5-6-1949. It has nothing to do with his subsequent application dated 7-6-1949.

On this application marked 'D' dated 7-6-1949, there was a detailed enquiry. Objections were also heard from neighbours. The Village Officer's report at page 25 of file No.I shows that the plaintiff has converted about 24 gunthas into cultivable area that year. The Mamlatdar's report recommending the grant of the land to the plaintiff on new and impartible tenure is at pages 35-37 of file No.I (marked 'E'). This is dated 16-7-1949. But in the meanwhile, there were objections received from the Village Panchayat and some of the neighbours. File No.II refers to this enquiry. The Mamlatdar's note is at page 5, which

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remarks, that such objections were not reasonable (marked 'F'). There is another report of the Mamlatdar at pages 29-31 in file No.II (marked 'G' dated 21/22-6-1949) recommending the grant of the land to the applicant. The Prant Officer, Karwar Division supported Mamlatdar's report by his endorsement dated 25-6-1949 made below this Mamlatdar's report. It is at page 32 of file No.II. In file No.III at pages 31- 33, there is a report of the Mamlatdar dated 19-9-1949, submitted through the Prant Officer recommending the grant of land to the plaintiff. The endorsement of the Prant Officer dated 7-10-1949 is below this report. It is marked 'F'. On 30-11-1949, the Collector of Kanara overruled all the objections and rejected the application of the Sarpanch of the Village Panchayat and ordered that he should be informed that the request to cancel the grant of the land already made and to keep it open, cannot be considered, and that the survey numbers should be disposed of for raising food crops in accordance with the orders contained in G.R.R.D.No.366/33-X dated 10-3-1947. This order was forwarded by the Prant Officer to the Mamlatdar on 5-12-1949 stating that the Mamlatdar should submit revised proposals for final orders. Enquiry form was accordingly obtained from the Shanbhog for granting the plot to the plaintiff. This is at page 39 of file No.III. This form mentions that Rs.300/- has been spent by the plaintiff and that it would require about Rs.500/- for bringing the land under cultivation. But no final orders appear to have been passed granting the land to the plaintiff.

On 19-4-1951, the matter was again raked

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up by a neighbour called Jagannath Keshav Naik by his application at page 29 of file No.IV, protesting against the grant of the land to the plaintiff. The final recommendation of the Mamlatdar of Ankola is at pages 55-56 and is dated 11-1-1952. He states that the land is still in possession of the plaintiff and that fine of Rs. 5/- should be levied from him for cultivating the lands during the previous two years in addition to the assessment already paid. He also recommended the grant of the land to the plaintiff subject to the condition of leaving a strip for public path (marked 'I'). In the meantime, the Sarpanch of Ankola again objected to the grant of the land by his letter dated 9-12-1951, which is at page 59 of file No.IV. The then Mamlatdar reported that the plaintiff had done some digging unauthorisedly and that the land, if sold, might bring a decent amount to Government.

So, he objected to the grant. His report dated 16-3-1952 is marked 'J'. The Prant Officer's report dated 30-4-1952, is at pages 69-71 of file No.IV. He agreed with the Mamlatdar. Accordingly on 16-7-1952, the Collector passed an order which is at page No.1 of file No.VI (marked 'K'). He ordered that the plot should be reserved for a public purpose. The Mamlatdar appears to have passed an order on 22-7-1952 (which is at page 3 of the file) that Rs.5/- should be recovered as fine from the plaintiff for cultivating the land in the years 1950-51 and 1951-52. Then, it appears the plaintiff applied to the Revenue Minister on 28-7-1952(vide copy of his application marked 'L'). There was a panchnama held on 9-9-1952 which is at page 21 of file No.VI. It says that one acre of the land has been encroached by a fence leaving out only 19 gunthas, which area is in form

condition whereas area of about 35 gunthas which was fallow has been turned into a cultivable area; and that the plaintiff has dug up-to the extent of 2' to 3' and removed earth which was spread on the higher leval for the road and brought under the cultivation spending about Rs.500/-(marked 'M'). The report submitted by the Mamlatdar, in reply to the plaintiff's application to the Honourable Minister, is at pages 23-26 and the Prant Officer's endorsement is at pages 27-28. Copy of Government's reply dated 20-11-1952 on the plaintiff's application referred to above is at page 1 of file No.7(marked 'N'). At page 3 of this file is the Mamlatdar's order dated 26-12-1952 that Rs.5/- should be recovered as fine for the unauthorised occupation by the plaintiff of the suit S.No. during the years 1950-51 to 1952-53. Accordingly, the amount appears to have been recovered and credited to treasury on 8-8-1952 and 23-2-1953.

© Page 4 of file No. VII
® Page 7 of file No. VII.

Para 4:

The summary of the above statement of facts will show that the plot had been granted to the plaintiff only for one year, and although it was repeatedly recommended to be granted to him on a permanent tenure there is no order to that effect. Therefore, the plaintiff was not entitled to make any improvements in the lands unauthorisedly. He might have done them in anticipation that the plot would be given to him. The proceedings were pending for a long time on account of repeated objections from the Village-Panchayat and some of the villagers. It is true that the plaintiff's possession has continued during 1950-51 to 1952-53, but no fine was levied in each year

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as the plaintiff's application was pending. A fine was recovered after the plaintiff's request was rejected. Section 65 of L.R.C. is not applicable as the land is Government waste and not an occupied one.

The plaintiff asserts that the Mamlatdar issued an order on 21-6-1949 saying that this S.No. had been granted to him om condition that he should leave a path of 10' wide for the use of public. The plaintiff has produced this order with the plaint but no office copy is forthcoming. It must have been issued after the plaintiff passed the agreement for one year's temporary lease. This form bears . No.KK. This is issued under rule 54 L.R.Rs. and section 60 L.R.C. granting permission to enter upon Government land. It is, however, to be noted that this order does not mention the period of occupation nor does it give any reference to which application it refers. But from the facts stated above, it would be clear that this order refers only to temporary grant and not to any permanent grant.

Para 5:

It is a fact that the plaintiff has dug up the land and improved it. But the panch valuation is that he has spent only Rs.500/-. It appears that he has brought under cultivation about 30 gunthas and also after removing the earth to the extent of 2' to 3'. He has prepared a kachha road as a public path(vide panchanama quoted above). Nobody objected or took any action as plaintiff's application for permanent grant was still pending. But, as his occupation after 31-3-1950 was unauthorised, he is not entitled to claim any relief for damages. Government was not bound to protest all these acts of improvement and therefore, it is not stopped from

denying the facts that the land was granted on lease as contended by the plaintiff in para 5.

Paras 6 to 8:

Tagai loans are granted to all cultivators. The plaintiff might have been granted a tagai loan because he was an actual cultivator but there was no record forthcoming to the grant of such a tagai loan. The Mamlatdar reports that no records are forthcoming.

Para 9:

From the papers, it appears that a fine of Rs.5/- was recovered from the plaintiff on 8-8-1952 and not earlier.

Para 10:

On 27-7-1952, the Mamlatdar has informed the plaintiff through the V.Os. that the land could not be granted to him on permanent basis. He has also received a reply from Government to the application made to the Hon. Minister. The notice dated 27-1-1953 was issued.

Paras 11 and 13:

The foot path of 10' width partially lies in S.No.160 and partially in fort area. There is no public road at present passing through the land, but the foot path is required to be turned into a pakka road for public purposes. Hence the land has been assigned to defendant No.2.

The whole S.No. has been earmarked for the use of the Village Panchayat as the Village Panchayat requested for it for having a pakka road through the S.No. The propposed road passes right through the S.No. as marked in the sketch at page 5 of file No.V (slip 'Z'). The Mamlatdar reports that an area of about 33' in width would

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be necessary for construction of a good road in which case the remaining area would not be suitable for cultivation. The plaintiff's contention that only a road of 10' in width at the border of the S. No. would be sufficient for the purpose is not tenable. Moreover, there is a ditch of the old fort to the South of the land and construction of a road just at the edge of the ditch would not be proper as its maintenance in good condition would require much expenditure, besides being unsafe to carry dead bodies at odd hours of the night. So, in the interest of public safety a road of 33' in width will have to be constructed as proposed by the Village Panchayat. If such a road is constructed, it will occupy about 25 gunthas of land and there will be hardly sufficient land for cultivation. Since large quantity of earth in the vicinity i.e. just by the side of the fort, is available, no great expenditure would be required to fill up the plots and to construct a road".

Para 12:

It is true that lands are assigned to Village Panchayats only for public purposes. The land in question is so situated that the public road through it is essential. Hence the land has been assigned for the purposes of the Village Panchayat. The plot has not been given to the Village Panchayat for cultivation. The plaintiff cannot claim any damages as his possession of the land was unauthorised and consequent improvements therein were illegal.

Accomp.

File I	1	15	38
File II	1	15	41
File III	1	15	60
File IV	1	15	72
File V	1	15	14
File VI	1	15	32
File VII	1	15	63
File VIII	1	15	27

The District Government Pleader, Kanara, has been asked to obtain adjournment from the Court till the defence of the suit is sanctioned by Government.

The papers of the case in 8 files accompany.

O.C.signed
by Collr.
29/11/2

D.S.Joshi 2-12 P.A.
Collector of Kanara

In the Court of the Civil Judge, Senior Division, Karwar.

Original Civil Suit No.205 of 1953.

Nagappa Yegu Naik, agriculturist, aged 38 residing at Ankola ... Plaintiff.

Vs.

1. The State of Bombay.
2. The Village Panchayat, Ankola. ....Defendants.

Claim: Rs.2000/-

The plaintiff begs to represent as below:

1. Ankola Taluka - Shedgeri S.No.160, area 1-19-0 Assessed at 0-6-6 was a Government waste land, for several years. A rough sketch thereof accompanies. Plff's house is within a furlong from this plot just opposite the office of the D.K.Union Company. This plot was of uneven level. There were rocks in between, the traces of which can still be seen in the plot.

2. On the South of this plot there is an old fort which is in a dilapidated condition surrounded by a ditch. To the North of this ditch this waste land of S.No.160 is situated. When the Government launched the Grow More Food Campaign such plots were granted to agriculturists with a view to bring such waste plots under cultivation with a view to bring more area under cultivation.

3. The plff first got this plot on one year's temporary tenure in 1949-50 from the Revenue Department. Then on 7-6-1949 the plff applied that this plot may be granted to him on permanent tenure. Under Rule 52 of the Rules made under the Land Revenue Code, lands are leased for purposes of agriculture for one year. Read with Rule 37(1) an agreement has to be obtained from every person who is to become an occupant of the land under this Rule. But no such agreement was taken from the plaintiff as he had applied for the land being granted on permanent tenure. In the Land Revenue

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Rules there is Form F' prescribed for obtaining such agreement, under rules 37, 43 and 52.

4. An occupant of land is entitled to make any improvements thereon for the better cultivation of the land under Rule 65. If the plff had been granted only one year's occupancy rights an agreement in Form 'F' would have been taken from him. The plff would have been compelled to surrender the land after the end of the year. No occupant would have cared to effect improvements if it was only for one year that the land had been granted. There was no order issued to the plaintiff to his application dated 7-6-1949 which had been submitted through the mamlatdar. Under section 65 if the Collector fails to inform his decision within a period of 3 months the permission applied for should be deemed to have been granted. On 21-6-1949, the Mamlatdar issued an order saying that this S.No.160 had been granted to the plff on condition that he should leave a path of 10 feet wide for the use of the public. This printed order says that it has been issued under Rule 54. This Order does not say that the grant was only for one year. The Form used appears to be Form 'kk' mentioned in the Land Revenue Rules. It is quite different from Form 'F' which is used for temporary leases. It appears to have been issued under section 60 of L.R.C. It is thus clear that this order did not refer to any temporary lease. The plff bonafide thought that he had been granted this land on permanent tenure as requested by him in his application dated 21-6-1949.

5. Under this bonafide belief that this plot had been given to plff on permanent basis for cultivation plff started turning this area into agricultural plots. The only condition laid in the mamlatdar's order was that 10 feet wide space should be reserved as a public path. Plff complied with this condition. As shown in the accompanying sketch the plff prepared several plots

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in this Survey number by digging up and levelling an area of about 35 gunthas in the first year of this grant after spending a very large amount for this improvement. This was done openly. Nobody protested against it. Plaintiff removed the stones and lowered down the level by removing the earth from this plot with a view to bring it under cultivation. At some points plff had to dig to the extent of 5 feet and on an average at 3 feet. The mud and the stones which were removed were used for preparing a road of 10 feet width which plff constructed on the Northern side of this plot where the path originally existed, though he was not bound to do it. The plff would not have undertaken all these improvements if the plot had been granted on temporary basis. The deft. No.1 acquiesced in these improvements and thereby confirmed plff's impression that the plot had been given to him on permanent basis. Therefore the deft. No.1 as also deft. No.2 who claims through deft.No.1 are estopped from denying the fact that the land was granted on permanent basis.

6. The plaintiff applied for a tagavi loan for purchasing bullocks, seed etc. for the cultivation of this land. The loan was sanctioned obviously because plff was bringing this plot under cultivation by improving it and also because the plot had been given to him on permanent tenure. If it had been given to plff only for one year, he would not have laboured so much and improved the land. Neither deft No.1 would have given him such loan if the plot had been granted to him for only one year. Plff invested more than Rs.2000/- for these improvements in addition to his personal labour and also of his family members. The loan had been granted after verifying the fact that plot had been improved as stated above. brought it to his notice

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that the plot had been granted on temporary basis. The plot continued to remain in the possession of the plff for the years 1950-51 and 1951-52, without any fresh application from the plff. This also confirm the plff's impression that the land had been granted to him on permanent basis.

7. In 1950-51 plff continued the work of improvement and converted an additional area of 5 gunths on the same lines as in the previous year. In this year only assessment was recovered from plff. No one objected to plff's cultivation. There was no fine levied from plff for cultivating this plot in this year which would have been levied if the plff had been granted the plot only for one year.

8. In 1951-52 plff found that the mud spread on the 10 feet space had been washed away in some places. So he improved the road by spreading mud thereon. He continued the cultivation also in this year without any objection from any officer and also without his applying for permission to cultivate this land in that year. On the other hand, the efforts made by the plff to turn this waste plot into cultivable area were highly appreciated by the local officers.

9. For the first time the plff was called upon to pay a fine of Rs.5/- alleging that he had cultivated this land unauthorisedly. This was in August 1952. Plff paid this fine on 8-8-1952 under protest. In the meantime he also petitioned to the Government. But on 20-10-1952, he was informed by the Government that his request to give the land on permanent tenure cannot be [illegible] as the plot was required by deft No.2 and that his cultivation of the plot in the years 1950-51 and 1951-52 was unauthorised but that he had been allowed to reap the crop of the year 1952-53 also.

10. Thereafter plff received a notice for the first time marked 'TRC 204 dated 27-1-1953' to the effect

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that this plot had been allotted to deft. No.2 for the purpose of a public road and that the Collector of Kanara had decided to oust the plff from the possession of the whole plot and that the plff should not enter the plot any more.

11. There is no public road actually used as such adjoining this survey number. There are the Police Line on the West. There is a Compound wall around this plot containing the Police Lines. There is no access to the public from the West. There is the Fort and the ditch on the South. Therefore there is no access from the South. Then there is the Karwar-Ankola Road on the North of this survey number which is about 3 furlongs away from this plot. There was a foot-path from this road which passed through the open space just behind the Police Lines. But there was no road at all. Ø Plff learns that this open space has been assigned to the Police Department for holding plice parrades. Thus there can be no road from this direction connecting the one that is expected to pass from S.No.160. There is a cremation ground to the South-West of the S.No. But they approached to this cremation ground is by a road which is to the South to the Fort and the S.T.Office. The path coming from the Karwar Ankola Road was used by some persons by passing through S.No.160 at its extreme South. It was, therefore, mentioned in the order dated 21-6-1949 that a space of 10 feet width should be left open for this public path. The plff has turned this High level area of about 10 feet width into a road and that is sufficient for the public use. The portion which had been improved by the plff has been turned into plots and is above 3 to 5 feet below this road level or the level of the land to the West of the survey number. The number of persons using this foot path is very small. Even

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assuming that there is necessity for such a road being prepared plff had already complied with the condition imposed in the permit or order dated 21-6-1949 by leaving sufficient space on this side of the Fort. It is therefore very strange that deft. No.2 has laid claim to this whole plot which will be quite useless for any of the purposes for which a Village Panchayat is run. It will not sensible to construct a road through the plots converted by the plff as they will require to be filled up at a great cost and brought to a higher level. It will simply amount to wasting the labour and amount spent by the plff for lowering down the area to bring it under cultivation in consonance with the Grow More Food Campaign. There is also no necessity to construct a road through this cultivable area as there is already a public road of 10 feet width already prepared by the plff.

12. In the first year 1949-50 plff got 5 khandis of paddy. After improvements the income increased to 10 khandis of paddy. The income is increasing since then. Therefore to prepare a road through this cultivable area will be inconsistent with deft No.1's Grow More Food Policy. Such a big area of 1 acre and 19 gunthas is not at all required by deft No.2 for constructing the road. The cultivable area will remain fallow if it is assigned to deft. No.2. Lands are assigned to Village Panchayats not with a view to cultivate paddy but only if the land is required for road purposes, digging up public wells or construction of any public structures. The object of establishing a Village Panchayat is not to undertake cultivation of paddy. To deprive the plff of the cultivable area would result in leaving the plot as a waste land in future unless deft No.2 finds any favourite to reap the advantages of plff's sweat, labour and money. The claim to this plot made by deft. No.2 is not bonafide one. The pretext put forward by deft No.2 that the whole plot

is required for construction of public road is thus clearly wrong. Their object of constructing a public road is fulfilled if the road level to the South of the cultivable area is assigned to them. Therefore the deft No.2's claim is not bonafide or legal. The Collector's order is thus illegal, immoral, and inequitable.

13. It appears that such an order has been passed under some misapprehension due to suppression of true facts, without seeing the plot personally. My request to the Collector in my notice issued under sec.80 to visit the plot personally and convince himself of the wrong basis of the order has not been complied with. The plff however learns that the panchanama has been made as regards the improvements effected by the plff and that the panchas valued the improvements last year far in excess of the plff's claim.

14. The order passed by the Collector and the claim made by deft No.2 are illegal. Even an ordinary tenant cannot be ousted under the B.T.& A.L.Act for 10 years. He is entitled to compensation for improvements. But the Collector has passed this order without visiting the spot and without giving any hearing to the plff. The order is clearly illegal.

15. The plff issued notice under section 80 on 7-4-1953 to both the defendants but no reply has been given by the defendants.

16. The plff has therefore filed this suit for declaration and injunction cause of action for which arose on 27-1-1953 on which date the order was issued to plff asking him not to enter upon the land.

17. The cause of action has arisen at Shedgeri in [redacted] within jurisdiction of this Court. [redacted] jurisdiction to try this

P.T.O.

suit.

18. Even after the mamlatdar's order dated 27-1-1953 plff has not been ousted from the possession. He has cultivated the land for the year 1953-54 and this fact has been acknowledged by deft. 1 and the V.Os. of Shedgeri have called upon the plff to pay a fine of Rs.5/- along with assessment for this year which the plff.has paid under protest. The crop in the land is being out and reaped by the plff.but the plff apprehends that if the Collector's order in question granting the land to deft. No.2 is allowed to remain the deft. No.2 may take the law in their hands and interfere with the plff's possession, hence this suit.

19. The plff. therefore prays for the following relief:

(a) For a declaration that S.No.160 of Shedgeri in Ankola taluka measuring 1 acre and 19 gunthas excluding the Southern portion of 10 feet width is held by him on a permanent tenure and not on temporary basis, and that the order of the Collector referred to in mamlatdar's TRC. 204 dated 27-1-1953 is illegal, inequitable and ultravires in granting the land to deft. No.2 and asking the plff to vacate the plot;

(b) For consequential injunction restraining both the defts. from interfering with plff's possession of the area in said S.No., excluding the strip of 10 feet width assigned for public path ....

Claim Rs. 5/-

In the alternative:

(c) Plff claims damages for compensation from both the defts on account of the outlay of labour and costs made by the plff in turning the waste land into agricultural cultivable plots to the extent of one acre since 1949-50, openly acquiesced by deft. No. 1 and never objected to till 1952 and also by reason of the Village Panchayat traying to grab the benefit of these improvements effected by plff.at a great cost and as both the defts. are bound to compensate for the improvements bonafide effected by the plff. ... Claim Rs.2000-0-0.

Karwar,
-10-1953. Sd/-

I, Nagappa Yegu Naik do hereby solemnly declare that the contents of this plaint are all true to the best of my knowledge and belief.

Below copy of injunction order dated 26-12-1953 issued by the Civil Court, Senior Division, Karwar in Civil Suit No.205/53.

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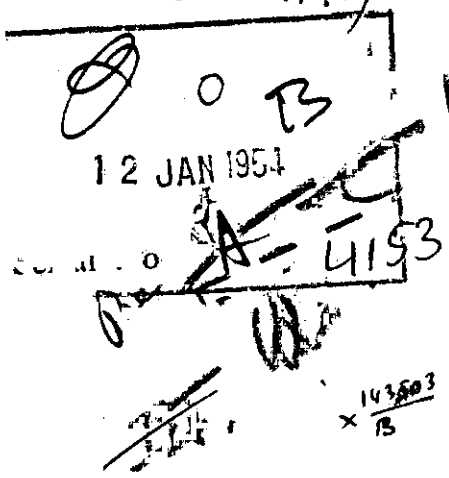
No.O/C 360
Karwar, 7-1-1954.

Forwarded with compliments to the District Government Pleader, Kanara, with reference to this office No.O/C 360 dated 12-11-1953 for obtaining adjournment from the Court as Government sanction to defend the suit is not yet received. Government is being reminded.



Sd/ S.B.Kulkarni
Collector of Kanara.

Copy submitted to Government with reference to this office letter No.O/C 360 dated 2-12-1953 for favour of early orders.

Collector of Kanara.

Revenue Department

RD
B

The papers containing the Collector's reference overleaf have been transferred to L.O. to LD on 22-12-53. This may, therefore, be passed on to the LD for disposal.

No. O/143503

THE SECRETARY TO ... LEGAL ... MENT
File No. 1658
Sub No.
Branch
19/1/54

Chkd
14-1-54

15/1/54

Ltr to LO dtd 16-1-54

L.D.
18 JAN 1954

H.S. III

15/1. Despatch letter to LO after taking note of contents

cuts

L.D.
18 MAY 1954

2 1/2

4507

INDIAN POSTS AND TELEGRAPHS DEPARTMENT

Class C.

Prefix J ..... Code ..... No.

Recd. from ..... Sent at ..... H. ..... M. Office Stamp.

By ..... To .....

By .....

Handed in at (Office of Origin) Date Hours Mins. Service Instructions Words.

14-9-54

TO

Rec'd 18/5/54 H. M.

18/5/54

O S KARWAR KNA 17 STE 28 SECLEX BOMBAY -

KINDLY EXPEDITE WRITTEN STATEMENTS IN SUIT NUMBERS 185 AND 205

OF 1953 FIXED 31ST MAY NO FURTHER ADJOURNMENTS POSSIBLE

DISTRICT GOVERNMENT PLEADER KANARA -

N.B.—Words not required should be struck out from the text.

L.&Co.—PC/177/52 CMI

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Kanara C.S. No. 205 of 1953.

Plaintiff Nagappa Yagu Naik of Ankola has filed this suit against the State of Bombay and the Village Panchayat of Ankola for (1) a declaration that S.No. 160 of Shedgri in Ankola Taluka is held by him on a permanent tenure and not on temporary basis, (2) a declaration that the order passed by the Collector of Kanara and communicated to him by the Mamlatdar on 27th January 1953, for the plaintiff's eviction from the said land is illegal, ultra vires etc., (3) an injunction restraining the defendant from interfering with the plaintiff's possession and alternatively for payment to him of compensation of Rs. 2,000/-

2. Defence of this suit may be sanctioned on the lines of the accompanying brief

MMC
20/6/54

D. S. (Civil) As amended
RK 20/6

NO 12772/E
dt 20/6

REVENUE DEPARTMENT,
SECRETARIAT, BOMBAY.
2 MAY 1954

25/29

No. 13155/E
Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 25th May 1954.

Subject:-Kanara C.S.No.205 of 1953.

MEMORANDUM.

The District Government Pleader, Karwar is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the lines of the brief, a typed copy of which is sent herewith in advance.

Papers of the case in nine files received from the Collector accompany.

Section Head's signature

for Remembrancer of Legal Affairs.

To

The District Government Pleader, Kanara, Karwar.

k 25

SS

URGENT PLEASE.

27/1

From:

The District Government Pleader,Kanara.

To

The Remembrancer of Legal Affairs, Bombay.

No. 294 of 1954. Karwar, dated 31st May 1954.

Sir,

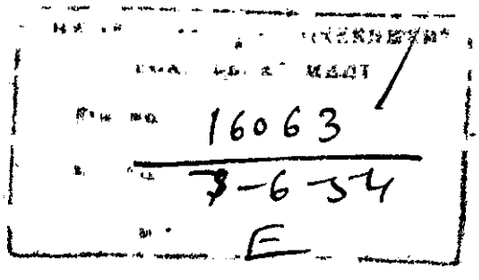
In O.S.No.205-1953 I received the papers with the lines of Defence on 29-5-1954. I have drafted the W.S. and sent its copy herewith. I have sent one copy to the Collector for clarifying the points mentioned in the lines of Defence and also to see if the facts mentioned in the W.S. are correct.

This suit had been fixed for filing W.S.today. Time has been granted for filing the W.S. on several occasions. Ordinarily the court does not grant more than 3 adjournments to any party. Whereas it is only in the case of suits against Government that adjournments have to be taken more than 7-8 times. The court observes that such indulgence cannot be given to the Government specially when the policy of the Government is that there should be speedy disposal of the litigation. When granting today's application the court asked me why the Government should not be saddled with costs or some such orders should not be passed on account of such abnormal delay. However as I convinced the court that the W.S. would be filed within a fortnight the court granted 2 weeks' time without imposing any conditions.

I, therefore, request to intimate the approval of the W.S. by wire if no amendments are made therein.

Yours faithfully,

Dist. Govt.Pl.Kanara.



Submitted

The draft W.S. on the
lines of the brief Doctrine
Court has presumably granted
a short adjournment, - H.
D.G.P. requests that he additional
of the draft U.S. Communicate
to him by wire

MMC
7/6/54 Sols (ML)

approved may
be communicated
by wire
AC

39
247

From:

The District Government Pleader, Kanara.

To

The Remembrancer of Legal Affairs, Bombay.

Reference: Civil suit No.205-1953 filed by Nagapppa Yegu against State of Bombay.

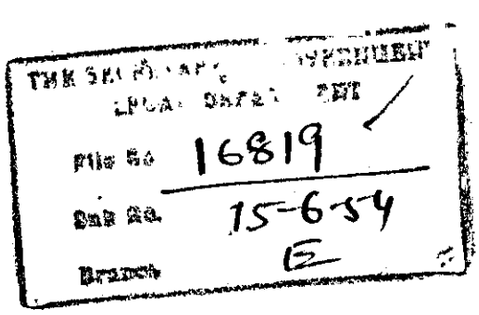
No. 338 of 1954. Karwar, dated 12th June 1954.

Sir,

I am in receipt of your wire intimating the approval of the draft written statement submitted to you. I had sent a copy of the draft written statement to the Collector of Kanara who has addressed me his letter No.Oc./360 dated 10th instant copy of which has been sent herewith. The suggestions made by him have been incorporated in the draft written statement and the copy of the final written statement has been sent herewith. I will file the written statement on the 15th instant.

Yours faithfully,

Dist.Govt.Pl.Kanara.



Letter.

(41) 30

From
To

The District Government Pleader,Kanara,Karwar.

No.O/C-360 Karwar, 10-6-1954.

Subject: S.No.160 of Shedgeri
Civil suit in respect of ..

Reference: Your letter No.295 dated 31-5-1954.

(1) The plaintiff was informed of the Collector's order dated 16-7-1952 on 1-8-1952 (please vide page 5, file VI).

(2) Dates of major improvements:-

From the extract of Record of Rights (pages 29-31 of file VIII) it is seen that the plaintiff had cultivated the land for the year 1949-50 on Ekasali basis. He had carried on only such agricultural operations year to year as were necessary for the paddy cultivation in the land and also levelled the same. The mamlatdar reports that no major improvements were made except making it fit for paddy cultivation. However, attention is invited to the plaintiff's statement dated 24-10-1951 about the improvements made by him (vide page 43, file IV).

(3) It is a fact that the plaintiff was granted a tagavi loan of Rs.250/- on 18-7-1949 for the purchase of bullocks and seed against the security of certain other lands of Shedgeri. The papers of the case together with the Tagavi Bond (File IX, pages 1 to 24) are enclosed.

(4) The date of panch valuation referred to in para 6 of grounds of defence is 9-9-1952 (please vide page 21 of fileVI)

(5) The plaintiff applied for the land on permanent basis on 7-6-1949 His application was under correspondence upto 16-7-1952. Hence, no action was taken to evict him upto 16-7-1952. However, action under section 61 of Land Revenue Code was taken soon thereafter. The eviction proceedings have been suspended as the Civil Court issued a temporary injunction on the State of Bombay restraining the State from disturbing the possession of Shri Nagappa Yesu, the plaintiff.

Sd.

P.A. to Collector of Kanara

True copy
Bhandarkar

.0 feet in width for the use of the public. The plaintiff therefore contends that he took it for granted that the said land had been permanently granted to him. This contention of the plff is; Ex.facie false and it is denied. The office copy of the letter alleged to have been written to the plff on 21-6-1949 ~~xfxthe~~ by the mamlatdar of Ankola is not found in the record. Even assuming, without admitting that such a letter was sent by the mamlatdar on 21-6-1949 it cannot be interpreted to mean that the plff's request for the grant of the suit land on permanent tenure made in his application dated 7-6-1949 had been granted. According to plff's own averments in para 4 of the plaint, the said order was issued under Rule 54 and was in printed form KK. Section 60 of the Bombay Land Revenue Code provides that any person desirous of taking up an unoccupied land which has not been alienated must, previously to entering upon such occupation obtain the permission in writing of the mamlatdar. Rule 54 of the Bombay Land Revenue Rules provides the permission in writing to be given by Mamlatdar under section 60 to enable an intending occupant to enter upon occupation shall be in~~formed~~ form K or KK. Under administrative order No.XXV mentioned below Rule 54 no such permission shall be given until the mamlatdar has ascertained that either a lease or an agreement has been duly executed and delivered under one of the rules 37 to 47, 51 or 52 as the case may be. The plff had applied for grant of land on temporary basis on 4-6-1949 and the request had been granted and he had executed a kabulayat on 5-6-1949. The permission, if any, therefore, conveyed to plff on 21-6-1949 in printed form No.KK is referable to the plff's application dated 4-6-1949 and to the kabulayat signed by him on 5-6-1949. It was not an order sent to him in reply to his application dated 7-6-1949 for the grant of the suit land on permanent tenure. This is also evident from the fact that the enquiry was separately started in the matter of the plff's application dated 7-6-1949 and a report had been submitted by the mamlatdar on 16-7-1949. Therefore the order could not have been passed on 21-6-1949 in the matter of permanent tenure. It is urged that the said order dated 21-6-1949 does not refer to the application of the plff submitted on 7-6-1949. The plff contends that the said order

363/47

In the Court of the Civil Judge, Senior Division, Karwar.

O.S.No.205-1953

Nagappa Vs. State of Bombay ... Defendant.

Written Statement on behalf of Defendant.

1. The order passed by the Collector of Kanara on 16-7-1952 refusing to grant the land in suit to the plaintiff is quite legal, valid, and intra-vires the Collector. Plaintiff cannot get the reliefs he now seeks, unless that order is set-aside. In any event, the plff had been informed of this order on 1-8-1952 altnough the plff applied to the H.M.R.D. to set-aside the Collector's order, time covered in pursuing the petition to the Government cannot be added to the period of limitation prescribed under Article No.14 of the Indian Limitation Act. The present suit has been filed on 7-10-1953. It is therefore barred under Art.14 of the Indian Limitation Act.

2. Looking to para 17 of the plaint it will be seen that the plff has purposely avoided to mention the date on which the alleged cause of action arose. In fact the plaint reveals no cause of action. The plff had submitted his application dated 7-6-1948 for the grant of the suit land on permanent tenure but his request was not granted. Finally on 6-7-1952 the Collector rejected his request. The plff was granted only one year's lease of the said land on 5-6-1949 i.e. upto 31-3-1950. Thereafter the lease was never renewed, nor any grant on permanent basis was made to him. Despite this, plff continued to occupy the land during 19-50-51 and 1951-52. During these years he had carried on only such agricultural operations from year to year as were necessary for paddy cultivation in the land and also levelled the same. No major improvements were made except making the land fit for paddy cultivation. He has still continued in possession unauthoresedly.

3. On 7-6-1949 plff had applied for grant of the said land to him on permanent tenure and on 21-6-1949 the mamlatdar informed him that the said land had been granted to him on condition that he should leave a path

35 'A

does not mention the temporary lease for one year and hence he though that the land had been granted to him on permanent tenure. This contention is also not true. The reply in form KK in which the communication of 21-6-1949 was made to the plff, was simply meant for conveying the mamlatdar's permission for occupying the land. The period of occupancy and terms and condition etc, were stated in the kabulayat dated 5-6-1949. It was therefore unnecessary to state the period in the said communication dated 21-6-1949.

4. The plff contends that he had submitted his application on 7-6-1949 for granting him permanently the said land and under section 65 the Collector failed to inform him of his decision within a period of 3 months and therefore he contends that the permission applied for should be deemed to have been granted to him. This contention of the plff is quite misconcieved. Section 65 of the Land Revenue Code has no application in the matter. That section is applicable to the case of an occupant of an agricultural land applying for permission to use his holding for any purpose other than agricultural. In the present case plff had applied for unoccupied Government land. Such applications fall under section 62 and section 60 of the Land Revenue Code.

5. Facts stated in para 5 regarding the improvements made by the plff appear to be partially correct. Plff however suggests that he effected the said improvements under the impression that the plot had been granted to him on permanent basis and that the deft No.1 had acquiesced in and confirmed this impression. This suggestion of the plff is not true and is denied. The lease granted to the plff was for one year only expiring on 31-3-1950. Plff was the best judge to consider whether and what improvements should be made in the land expressly granted to him on yearly lease. Even though the Collector passed his order refusing to grant the land to the plff

on 16-7-1952, the plff was not justified in effecting any repairs after 31-3-1950, in the years 1950-51 and 1951-52. Improvements effected after the expiration of the lease were not legal and authorised, as he was not entitled to make any improvements and even if he has made any, it was at his risk. The defendant is therefore not liable to pay any compensation for the improvements even if they are proved.

6. Plff next contends that he was granted tagavi loan for purchasing bullocks, seed etc., for the suit land and asserts that this fact goes to show that the land had been granted to him on permanent basis. He had been granted a loan of Rs.250/- on 18-7-1949 for purchase of bullocks, seed etc., against the security of other lands of Shedgeri Even if it be proved that plff had been granted such a loan that does not prove that the suit land had been granted to him permanently. Such loan if any, was presumably given to him because he happened to be an actual cultivator. Plff contends that he has spent more than Rs.2000/- for the said improvement. This is not true. A panch valuation had been subsequently made on 9-9-1952 which shows that plff had not spent any sum exceeding Rs.500/- on the said improvement. In any case the plff had been granted the land only for one year and the period of his lease had expired on 31-3-1950. The land had not been granted to him subsequently either temporarily or permanently. If however plff continued the occupation of the land unauthorizedly he cannot make any claim to the suit land on the basis of the amount alleged to have been spent by him. Nor can he claim any damages or compensation for the loss of the amount spent by him in the improvements of the said suit land to which he had no claim, and of which he was not a bonafide holder.

7. Plff avers in paras 6 and 7 of the plaint that the suitlands were continued in his possession during the years 1950-51 and 1951-1952, when he effected some further improvements and cultigated the land. The plff had applied for the land on permanent basis on 7-6-1949. His application was under correspondence upto to 16-7-1952. Hence no action could be taken to evict him tax till 16-7-1952. However action was taken under section 61 of the L.R.C. soonafter the collector's final order. The eviction proceedings however had to be

suspended on account of the temporary injunction order issued in this suit. The plff further asserts that the facts stated above confirmed his impression that the said land had been granted to him on permanent basis. The facts stated by the plff and the inference drawn by him are not correct. He was in unauthorised occupation of the suit land after 31-3-1950. He himself was or ought to have been aware of the fact that he had not executed any fresh kabulayat after the expiration of the period of Eksali kabulayat executed by him on 5-6-1949 nor had he any order granting him the said land temporarily or otherwise. As his application for permanent grant of the said land was under consideration, perhaps, no action had been taken to evict him.

8. Plff next attacks the order on the ground that the said land is not genuinely required for a public road and that the margin of 10' left by him is sufficient for any such purpose. No person can claim a right to the grant of any unoccupied Government land. It is absolutely a matter of discretion of the Government whether to grant or to reject a request of the grant of such land. Secondly, the suit land is genuinely required for a public road by the Panchayat- Defendant No.2 . It is true that at present there is no public road passing through the suit land but only a public foot path of 10' width. However it is necessary to turn the said foot path into a pakka road for public purposes and the whole survey number is ear-marked for the use of the village panchayat. According to the report of the mamlatdar an area of about 30' feet in width is required for construction of a pakka road. Plff's contention that only a road of 10' in width at the border of the survey number would be sufficient for this purpose is not tenable. Moreover there is a ditch of the old fort to the South of the suitland and the construction of a road just at the edge would

be both unsafe for the public and expensive. If a pakka road is to be constructed it will require an area of about 25 gunthas and the remaining area will hardly be sufficient for cultivation. The plff cannot take upon himself the right to judge the bonafide or otherwise of the requirements of the Village Panchayat. The collector was the officer authorised in the matter and he has passed an order after convincing himself of the genuine requirements of the Village Panchayat. The order passed by the Collector is thus quite legal and valid.

9. Plaintiff claims damages of Rs.2000/-. It is urged that plff's claim is both misconcieved and excessive. No wrong has been done to the plff in rejecting his application for permanent grant of the suit-land. The said land was avowedly granted to the plff only for one year on 5-6-1949. The period expired on 31-3-1950. Thereafter no order was passed either granting the land temporarily or permanently nor had the plff executed any kabulayat. Plff's occupation and cultivation of the said land was thus unauthorised after 31-3-1950. Hence he cannot claim damages for any improvements effected by him. Such a claim tantamounts to taking advantage of his own wrong. The amount of claim is excessive. According to panch estimate the plff has not spent more than Rs.500/- The plff is not entitled to claim even this or any smaller amount whatsoever from the defendant No.1.

10. For all the reasons stated above it is urged that the plff's suit fails and deserves to be dismissed with costs

B.S.M.

District Government,Pleader.

I, B.S.Mavinkurve, District Government Pleader,Kanara,Karwar do hereby declare that the contents of this written statement are true to the best of my knowledge and belief.

Signed at Karwar, on 15th day of June 1954.

B.S.M.

D.G.P.Kanara.

39/54

EXPRESS STATE

District Government Pleader,
Karwar.

O. 14033/E REFERENCE CIVIL SUIT
NO. 205 OF 1953 DRAFT WRITTEN STATEMENT

APPROVED

SECLEX

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 7th June, 1954.

copy by post.

O/C

for Remembrancer of Legal Affairs.

Submitted for signature
7/6/54

Issued 7/6

41 54

From:

The District Government Pleader, Kanara.

To

The Remembrancer of Legal Affairs, Bombay.

No. 535 of 1954. Karwar, dated 7th September 1954.

Sir,

I have the honour to send herewith a copy of issues framed in O.S.No.205-1953 for your information.

Yours faithfully,

Dist.Govt.Pl.Kanara, Karwar.

L. D.
13 SEP 1954

THE GOVERNMENT
26489
13/9/54

O.S.No.205-1953.

ISSUES.

1. Does Plaintiff prove that the suit land was granted to him by Defendant No.1 on permanent tennure ?
2. Is Defendant No.1 estopped from denying that it was granted on permanent lease to Plff ?
3. Does Plff prove the improvements alleged ?
4. Is he entitled to compensation and if so to what amount and from which of the defendants ?
5. Is Plff entitled to declaration and injunction sought ?
6. Is the suit barred by time ?
7. Is Deft No.2 an unnecessary party ?
8. What order ?

"True Copy"

Dist. Govt. Pl. Kanara.

RT No 34838 dt 1.12.54

Petition dt 26.11.54 received from Shri N.Y Vaik forwarded to R.D for remarks

U R to R.D No 27437/E dt 2-12-54.

Issued.

Letter

To

The Secretary to Government,
Revenue Department, Bombay.

No.O/C 360 Karwar, 17-11-1954.

I am enclosing herewith an application for compromise received from Shri Nagappa Yogu Naik, plaintiff in O.S.No.205/53 filed in the Court of Civil Judge, S.D.,Karwar.

The facts of the case have already been reported to Government under this office No. even dated 2-12-1953. As already pointed out in para 4 of that report, the plaintiff's occupation of S.No.160 of Shedgeri for the years 1950-51 to 1952-53 was unauthorised and therefore he cannot claim any compensation for the alleged improvement he had done. If at all, he had done any improvement, he did at his own risk.

In view of these facts, Government has a strong case. The request of the plaintiff for a compromise may be refused and the court may be asked to dispose of the suit on its merits.

o.c.signed
by Collr.

P.A.
for Collector of Kanara.

17/11.

The memo Mss. book bearing file No. LND. 3453/143503 were transferred to the L.D. on 22-12-53. This may also be taken up to that deptt. in continuation

23/12/54

24.12.54

A.S.G.) 24

moved to L.D. on 27/12/54.

To

The Collector of Kanara.

Humble application of Nagappa Yegu Naik of Ankola.

Karwar, 13th October 1954.

Sir,

I had filed O.S.No.205-1953 in the Court of the Civil Judge, Senior Division, Karwar against the State of Bombay, the Village Panchayat of Ankola praying for declaration that Shedgeri S.No.160 measuring A-G-As. 1-19-0 had been held by me on permanent tenure under Government and that it was wrongly granted to the Village Panchayat that a permanent injunction should be granted against them restraining them from interfering into my possession or in the alternative for damages to the extent of Rs.2000/ on account of the heavy outlay of labour and cost made by me to improve the land. My suit was contested by both the defendants. A commissioner was appointed to inspect the site and submit his report on the question of my improvements and the probable cost thereof. He accordingly reported that I had made vast improvements in the land and the cost thereof might be not less than Rs.1500/-. The suit was taken up for hearing in the said Court today. In the course of the discussion in open court a question arose as to whether I was prepared to widen the road along-side the ditch to the normal extent that might be required by the Village Panchayat particularly in view of the fact that I had invested much labour and amount over the improvements of the land and that in case I were to be proved of it, the Village Panchayat or for the matter of that even Government would have to spend a very large amount to fill up the portions excavated by me and prepare a new road. I had already prepared a road alongside the ditch whose width ranged from 14' to 22' I offered to widen the road already prepared by me to the required extent in case I should be granted a permanent tenure and allow-

to retain possession thereof and also to withdraw my claim for compensation. This proposal was thought to be reasonable and I therefore applied for an adjournment of the suit to enable me to approach your Honour and make my submission, accordingly the suit has been postponed.

I submit that I have spent a very large amount and a good deal of labour to lower the level of the land and bring it under cultivation. Out of its 12 plots 10 have been under paddy cultivation and one under Ragi cultivation. Only one plot is in an uncultivated state. I have prepared a good and pucca road alongside the ditch This road joins the Village panchayat road running from West to East. I was all along under the bona fide belief that my tenure was of a permanent character. This view was strengthened by the fact that my application for permanent tagavi was pending without orders for not less than 3 years. Under these circumstances, substantial injury will be caused to me if this land is taken away from my possession. I am prepared to fulfil the Government purpose in granting it to the Village Panchayat by widening the road already prepared by me to any reasonable extent. I would therefore appeal to your honour personally to visit the site and satisfy yourself as to nature of the improvements effected by me and the splendid condition to whichit has been brought and grant me this land on a permanent tenure on such terms as vou may deem it in which case I am willing to forego my claim to the compensation claimed in suit. I have made this representation without prejudice to my suit.

Yours obediently,

ನಂ.ಕೆ.ಪುಟ್ಟಯ್ಯ
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COLLECTOR'S OFFICE
KANARA.
File No.
Date of Receipt
14 OCT 1954

S/40/61

Submitted

In view of Collector's letter at Plaint, compromise proposals offered by the Plaintiff may not be accepted. The Collector may be requested to inform the Plaintiff accordingly

29/12

Sol (OS) 29/12

/ 53 63

No. 29693/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 31st December 1954.

To
The Collector of Karwar,
Karwar.

Subject:- C.S.No.205 of 1953
Nagappa Yegu Naik
vs.
The State of Bombay.

Sir;

With reference to your letter No. O/C 360 dated 17th November 1954 addressed to the Secretary to Government, Revenue Department, Bombay, I have the honour to request you to inform the plaintiff that the compromise proposals offered by the plaintiff in his application dated 13th October 1954 cannot be accepted.

Yours faithfully,

for Remembrancer of Legal Affairs.

k.30/-

Sel (Mis) 30/12

55 - 41

From:

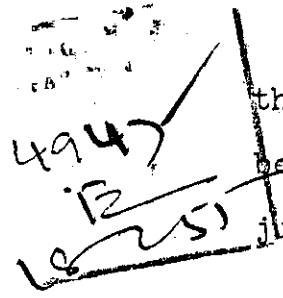
The District Government Pleader, Kanara.

To

The Remembrancer of Legal Affairs, Bombay.

No./35 of 1955. Karwar, dated 12-2-1955.

Sir,



O.S.No.205-1953 filed by Nagappa Yegu Naik against the State has been dismissed. No order as to costs has been made for reasons given in the judgment. Copy of the judgment will be submitted in due course.

Yours faithfully,

Dist. Govt. Pl. Kanara.

No. 3726/E 520
Office of the
Remembrancer of Legal Affairs,
Bombay Castle(Bombay No.1), 18th February 1955.

Subject:-C.S. No.205/53
Nagappa Yegu Naik
Vs.
The State of Bombay.

MEMORANDUM.

With reference to his letter No.135 dated the 12th February 1955 on the above subject, the District Government Pleader, Kanara is requested to forward to this office an uncertified copy of judgment and to state what is the last date for filing an appeal.

for Remembrancer of Legal Affairs.

To
The District Government Pleader,
Kanara, Karwar.

TKM/18.2.

Issued
18.2.55

Submitted for signature
18/2

Sd/- (illegible)
Secretary

59 A

From:

The District Government Pleader, Kanara.

To

The Remembrancer of Legal Affairs, Bombay.

No. 178 of 1955. Karwar, dated 2-3-1955.

Sir,

With reference to your letter No.3796/E dated 18th February 1955, I have the honour to forward herewith an uncertified copy of the judgment in O.S.No.205-1953. Decree has not been drawn up. So last date for filing of appeal cannot be intimated now.

Yours faithfully,

Dist.Govt.Pl.Kanara.

7 MAR 1955

THE SECRETARY TO GOVT. OF BOMBAY
LEGAL DEPARTMENT
File/No. 6761
Sub No. 1353
Branch 8

61 - 57

Received on: 7-10-1953.

Registered on: 8-10-1953.

Decided on: 11-2-1955.

Duration: 1 year, 4 months and 4 days.

In the Court of the Civil Judge, Senior Division, Karwa

At Karwar.

Ex.76.

Civil suit No.205-1953.

Shri V.S.Gokarn. — Nagappa Yegu Naik, agriculturist, 38, residing at Ankola. ..Plff.

Versus.

Dist.Govt.Pl. — 1. The State of Bombay.

Shri M.R.Kamat. — 2. The Village Panchayat, Ankola. ....Defendants.

Claim: Rs. 2000/-.

This is a suit against Government and the Village Panchayat of Ankola for a declaration and injunction or in the alternative for compensation.

The case made out by the Plff in his plaint is as follows: Shedgeri survey no.160 measuring 1 acre 19 gunthas assessed at 0-6-6 was a Government waste land and it was granted to Plff on one year's temporary tenure on 4-6-1949 from the Revenue Department in pursuance of ' Grow More Food Campaign ' On 5-6-1949 he executed a Kabulayat in favour of the Mamlatdar Ankola Taluka in respect of the said temporary lease. Then on 7-6-1949 he made another application for the grant of permanent lease of the said plot. No immediate reply was given to him about this his latter application. He therefore under bona fide belief thought that the plot would be given to him on permanent basis and started turning into agricultural plot at a considerable cost of about Rs.2000/-. The only condition laid in the mamlatdar's grant of the temporary least was that a strip 10 feet wide should be reserved as public path which

was duly complied with. He effected all the improvements in the land to the knowledge of the Government (Deft.1) and also of Village Panchayat(Deft 2) He further continued the work of improvement in 1950-1951 as well. Then for the first time in August 1952 he was called upon to pay a fine of R.5/- alleging that he had cultivated this land unauthorisedly. He paid the fine on 8-8-1952 under protest. In the mean time he also petitioned to the Government. On 20-10-1952 he was informed by the Government that his request to give the land on permanent tenure was not be granted as the plot was required by the Village Panchayat of Ankola for the purpose of constructing an approach road from the village to the public road. Thereafter he received a notice for the first time on 27-1-1953 to the effect that the plot had been allotted to the Village Panchayat for the purpose of constructing an approach road and that the Collector of Kanara had decided to oust the Plff from the Possession of the whole plot and that the Plff should not enter the plot any more. He therefore feels aggrieved by the said order and submits as under. His first submission is that in so far as the Government did not give immediate reply to his application for permanent lease and allowed him to effect improvements of a permanent nature with full knowledge, the Government must be deemed to have granted a permanent lease in his favour. Failing which the Government was at least estopped from denying the grant of any such permanent lease to Plff. His next submission is that the cause for which he was being evicted was not proper In the alternative his third submission is that he should in the event of his eviction be awarded compensation to the tune of R.2000/- for the improvements that he had effected on the land, and from which the Government stood to benefit. This in brief is his case and these in brief are his prayers.

2. The Government by its written statement, Ex.29, denies the grant of permanent lease and contends it had

not acquiesced in the improvements made by the Plff. For these reasons it submits that Plff was liable for eviction in view of the temporary lease that was granted to him. It next contends that the plot was genuinely required for approach road for the Village Panchayat and that therefore the Plff had no valid ground of contending against the same. It further contends that at any rate the matter of continuing the lease or of awarding the plot to the Village Panchayat was the absolute discretion of the Government and therefore Plff could not validly attack it on any such ground. Thirdly it contends that the improvements made by the Plff were at the most worth Rs.500/- and that further the Plff was not legally entitled to claim even this or any smaller amount from the Government as he effected the improvements at his own risk and cost. For all these reasons it submits that Plff's suit should be dismissed with costs.

3. The Village Panchayat, through its Sarpanch contends by its written statement, Ex.24, that it had nothing to do with the claim made by Plff. The matter according to it was purely one between Plff and Government. It further goes on to submit that it has not yet come into possession of the land and therefore Plff could not have any grievance against it at all. It finally submits that the claim made against it should be dismissed with costs.

4. The following issues were set down for hearing at Ex.36 :

1. Does Plff prove that the suit land was granted to him by Deft No.1 on permanent tenure ?
2. Is Deft No.1 estopped from denying that it was granted on permanent lease to the Plff ?

3. Does Plff prove the improvements alleged by him ?

4. Is he entitled to compansation and if so to what amount and from which of the Defts ?

5. Is Plff entitled to the declaration and injunction sought ?

6. Is the suit barred by time ?

7. Is Deft No.2 an unnecessary party ?

8. What order ?

5. Findings.

1. No. 2.No

3. Yes to the extent of Rs. 500/-. 4. No.

5. No. 6.No.

7. Deft 2 is a proper party; but not a necessary party.

8. As per order.

Reasons.

6. The Plff and Government did not elect to lead any oral evidence (Vide their joint Jahiri Ex.64). On behalf of the village panchayat its Sarpanch was examined at Ex.73. But his statement has no bearing upon the merits of the case

7. This is a case where one's sympathies go out to Plff, but one feels restrained by the hands of law from giving him any help. But before proceeding with the merits of the case it would be better to note down the situation of the land, a sketch of which can be found at Ex.55.The land in question which bears survey no.160 is situate close to the Sheugeri village on its western side. The southern portion of the land abuts on a ditch which surrounds the fort area. A few yards to the west of this land is the Karwar-Ankola public road. From the village to the public road a foot-path passes along with the southern side of this land which abuts on the ditch. A few paddy lands belonging to others are also situate near it. Further on either side of the land are situate the cremation-ground of the Hindus and the burial-ground of the Muslims. This in brief is the location of the suit land.

The land in question was admittedly a waste land. It was granted to Plff at his instance (Vide his application Ex.69 dated 4-6-1949) on temporary lease basis for a period of 1 year by the Government in pursuance of its policy of ' Grow More Food Campaign'. A condition however was imposed upon Plff while granting the lease that he should keep open a foot-path of 10 feet wide in the field for the purpose of passage of the public. Plff accepted the condition and passed a Kabulayat on 5-6-1949 accordingly (Vide Ex.70). Then further on 21-6-1949 a Sanad was granted to him under Ex.45 by the Mamlatdar of Ankola confirming the grant of the temporary lease for one year with the condition about the footpath incorporated therein. The Plff made a fresh application to the Government on 7-6-1949 which was 2 days after the execution of the Kabulayat by him that the land should be granted to him on permanent lease basis. This request of his was not given an early reply to. But however as admitted by Plff he was informed on 20-10-1952 by the Government that his request could not be granted as the plot was required by the Village Panchayat for the purpose of constructing an approach road. In view of these facts which are admitted beyond dispute, it is quite clear that there was no grant of any permanent lease in Plff's favour as such. His pleader also was unable to press Plff's claim on the basis of an actual grant having been made to Plff. Hence I answer issue No.1 in the negative.

9. Plff's alternative case is one of estoppel and it is urged under the following circumstances. His case is that the Government did not give a timely reply of refusal to his request

for the grant of a permanent lease and so he was led to believe that he would be granted a permanent lease. Further, he was also not evicted immediately after the termination of the one year period of the temporary lease and no fine was also levied against him for continuing to be in possession of the land even after the termination of the lease. These factors according to him further gave him the impression that the Government would in due course grant him the lease. So, being led away by the belief he began to turn the whole of the area into an agricultural plot and actually made nearly 35 gunthas of it fit for cultivation of paddy at a cost of about Rs.2000/-. He further submits that he effected all this improvements in the presence of the local authorities. So for all these reasons he submits that the Government was estopped from ~~ex~~ ousting him out on the basis of the temporary lease.

10. How much of what he says is no doubt supported by evidence. The Commissioner who was appointed in this case reports that he has prepared the land which was once lying waste. The local authorities also it seems knew about this fact. But then the difficulty is to impute the knowledge of these improvements to the Government. The mere knowledge on the part of the local authorities is not enough to impute knowledge to Government. It might be that the local authorities did not inform the Government about the improvements that were being effected by the Plff; in which case Government cannot be imputed with vicarious knowledge. Even supposing that the Plff effected the improvements with the knowledge of the Government still there is no evidence to show that Government either directly or indirectly induced him to make these improvements. The only important point made by Plff against the Government in this connection is that it did not give him any timely reply of refusa l and thereby he was induced to believe that it would make him the grant. The submission in my opinion, is quite unacceptable. In order to bring the law of estoppel into operation it was incumbent upon

Plff to prove some active inducement on the part of the Government which is absolutely lacking in this case Further, the Plff has not even stepped into the witness -box to support his allegation in this behalf. So I do not think the case for Plff can be advanced successfully merely on the ground that no timely reply was given to him. The failure to give a timely reply might be due to very many circumstances. In the first place we should know that the Government is a gigantic institution concerned with the administration of the whole province. So it could not have found sufficient time to attend to Plff's request immediately; or it might even be that the Government was pre-occupied with some of the allegations made against even the temporary grant of the land that was made to Plff. That can be seen from Ex.65. By that application the villagers of Shedgeri had actually complained against the grant of the grant of the land to the Plff on various grounds and the mamlatdar held a detailed enquiry regarding all those. So the Plff in my opinion, cannot turn the little delay to his own advantage, when the essential factors which are necessary to invoke the aid of estoppel are altogether absent in his case.

11. The next point made out by him is that the Government did not oust him after the lapse of the temporary period of 1 year and further also did not levy any fine against him for the improper user that he was making of the land after the lapse of period. And so these two factors in addition according to him led him into the wrong belief of a possible permanent grant in his favour. But I must observe here, these two points also cannot carry his case of estoppel any further. The fact that the Government did not oust him out of possession

immediately after 1 year's period and did not also levy fine immediately thereafter might be due to so many factors. Perhaps it might be due to inadvertence on the part of the authorities or perhaps the Government was still considering the application about the grant of permanent lease made by the Plff. So from two such xxxx factors which can be explained on many grounds Plff cannot urge with emphasis that these actions on the part of the Government were done with a view to induce in the Plff the belief that he would be granted a permanent lease . It all seems to me that Plff was goaded all along to effect the improvements by his own wishful thinking. That being my view, I do not think there is any case for Plff which goes to support the plea of estoppel urged by him.

12. When thus Plff fails on both these grounds there remains practically no case justifying the grant of any injunction in his favour as prayed for by him. Plff's learned pleader, however, complaines bitterly against the inequity of the order passed by the Government in the matter. As the matter stands before me, the Government had decided to allot the land to the Village Panchayat for the purpose of constructing the approach road to the village. But the learned Pleader's submission in this behalf is to the following effect:

> The main purpose for which the Government wants to allot this land to the Village Panchayat is for the purpose of enabling it to construct an approach road in this plot. But there exists already a foot path 10 feet wide along the southern border of the land. The width of this foot-path may if necessary be extended and Plff is willing to surrender that much portion. The Plff has already, at great labour and cost converted 35 gunthas of this plot into arable land by digging pits and making suitable plots fit for paddy cultivation. So under these circumstances when both the Plff and the Village Panchayat can be conveniently accommodated it would be sheer hardship to ask Plff to vacate the entire land upon which he has expended so much labour and cost.

Now no doubt I can quite understand the strength of the plea. The Plff is a poor man and as reported by the Mamlatdar below

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below Ex.65 comes from a back-ward community. He was allotted this portion in pursuance of the Government policy of ' Grow More Food Campaign' Rightly or wrongly Piff believed that he would be granted the permanent lease of the land and expended much labour and money over it in converting the waste piece into an arable land. He also left a strip measuring 10 feet wide along the southern border for the purposes of the public foot-path and further his pleader is even willing to surrender some more portion if necessary for the expansion of the width of the foot-path. Now if we read the submission of the Mamlatdar below the application made by some of the villagers against the grant made to Piff, we can see that the ~~xxxxxxxxx~~ construction of the proposed approach road is not after all such a pressing necessity. To quote from the Mamlatdar's report:-

> From the reply of the Sarpanch Ankola at page 17, it seems that the Sarpanch has given this telegram on somebody's suggestion. It also seems that he has not seen the site. From his report at page 25 it is seen that the land is required for the purpose of the village approach road from Ankola-Karwar P.W.D.road to Shedgeri hamlet. The village road which leads to the Fort from Ankola-Karwar P.W.D.road is shown in the sketch in red ink. The width of this road is 20 feet. If this road is to be taken to the Shedgeri hamlet it should pass through S.Nos. 160 and 83A 1 of Shedgeri. The area of S.No. 160 is 1-19-0 and such whole area of 1 acre 10 gunthas is not required for the purpose of road. There is no necessity of an approach road. There is no necessity of an approach road for few houses situate at a distance of half mile from this S.No. as there are near-paths to this hamlet. Such ridiculous proposal need not be taken in Post-war reconstruction scheme. As for foot-path to cremation ground, 10 feet path is already there. If the village road from the Fort is to be continued through the S.No.160 of Shedgeri, its width would not be more than 20 feet as the original existing village road is 20 feet ~~xx~~ in width. If the foot-path of 20 feet is allowed from one side of the boundary of S.No.160 an area of 15 to 18 gunthas will be required for the purpose of road and a net area of 1 acre can easily be cultivated than keeping the whole area fallow when there is demand for the same . . . . . I do not know why

> the Sarpanch requires whole of S.No.160 for the purpose of road. This attitude appears to be a ' a dog in the manger' policy. Most probably the V.P.C. has not carefully considered these facts. Since 14 years' experience I have seen that the Sarpanch without going in detail nor seing the site, simply objects to each and every plot for which his opinion is sought ...."

Now if this report of the Mamlatdar is any guide it does not at all speak favourably about the attitude now taken by Government in depriving Plff of the whole plot and allotting it to the Village Panchayat for the purpose of constructing the approach road. But then the discretion in the matter was vested entirely in the Collector and he was the best Judge to adopt the course which he liked. And that being so, this Court has absolutely no authority to have any say in it. Therefore, whatever the sympathies of this Court might be towards Plff it feels itself helpless in the face of the Collector's order to render any effective help to him. The result in the end is, Plff's suit for declaration and injunction must fail.

13. Next regarding the contention of limitation under Article 14 :- The cause of action as stated in plaint para 16 arose on 27-1-1953 on which date the order was issued to Plff not to enter upon the land. But earlier at para 9 Plff admits that he was informed on 20-10-1952 by the Government that his request for permanent tenure had been rejected. The Government on the other hand pleads at para 1 of the written statement that the order refusing the grant was passed by the Collector on 16-7-1952 and Plff was informed of it on 1-8-1952. The Government pleader has not invited my attention to any document containing the said order and the said communication. So I presume that Plff came to know of the refusal of the Government on 20-10-1952, as pleaded by him. This suit was filed on 7-10-1953 which was well within one year from the date of the communication of the refusal of the grant to Plff. The contention, therefore, is obviously untenable.

14. That brings us to his alternative case of compensation. His case in this behalf is that he had to incur

an expense of about Rs.2000/- on account of the outlay of labour and improvements made by him in turning the waste land into agricultural cultivable plots and the Government and the Village Panchayat both stand to benefit by these improvements effected by him and therefore he was entitled to compensation in that behalf under Sec.70 of the Indian Contract Act. Before dealing with Plff's alleged right to compensation I would first try to ascertain the amount claimed by way of compensation. Plff, of course, has led no evidence in this behalf. He mainly relies upon the report of the Commissioner who in his report at Ex.51, has fixed the valuation of the improvements at Rs.1500/-. But the Government pleader did not agree to the valuation made by the Commissioner. In the face of the disagreement on the part of the Government Pleader it was incumbent upon the Plff to examine the Commissioner on this point and further to support his evidence by any additonal reliable evidence if any. The Plff has not done anything of this sort. So the Commissioner's valuation cannot be accepted at its face value. But all the same the Government admits the fact of the improvement made by Plff and according to it the value of the improvements effected is only R.500/-. I therefore fix the value of the improvement at Rs.500/ to the extent of the admission made by the Government itself.

15. Now I take up the question whether the Plff is entitled to the value of the improvements under Sec.70 of the Contract Act as claimed by him. Section 70 runs thus:

> '" Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to

the former in respect of, or to restore, the thing so done or delivered."

Many rulings have been quoted regarding the interpretation of this Section. But the best I find is contained in Pallonjee Eduljee & Sons V.Lonavala Municipality, 39 B.L.R.835. Therein it is observed that the applicability of Sec.70 of the Indian Contract Act does not depend upon the existence of a contract binding on the parties and does not provide for contractual liabilities.The Section applies where three conditions exist, namely

1. A person lawfully does anything for another person or delivers anything to him;
2. the law-ful act or delivery has not been intended to be gratuitous; and
3. the other ~~xxxxxx~~ person enjoys the benefit thereon.

When these three conditions are satisfied, then only liability of the lattef person to make compensation arises under this Section. But unfortunately, I do not think, Plff has a good case in this behalf. Even granting the first two conditions in his favour, I think there is absolutely no case under the 3rd condition according to which the other person should enjoy the benefit thereof. Now it is admitted on all hands that the plot is allotted to the Village Panchayat for the purpose of the construction of an approach road. So being, the Village Panchayat instead of in any way being benefited by the improvements effected by Plff, will on the other hand be put to a great expense in filling up all the pits dug by Plff and levelling them up for the purpose of constructing the approach road. Thus instead of any benefit accuring to the Village Panchayat by the improvements effected by the Plff it on the other hand stand to lose heavily on that account. I could have

understood Plff's case if the land had been allotted to another for the purpose of cultivation. In such a case Plff's case for compensation would have been placed on a better footing. But, as it is, his case for compensation cannot be sustained at all in view of the admitted facts. I therefore disallow his alternative prayer as well.

16. Thus in the end we find that the unfortunate Plff stands to lose everything. So the question now is what should be the proper order to be made regarding costs. The ordinary rule is, costs should follow the event and Plff having failed in this suit, the Government and the Village Panchayat are ordinarily entitled to costs. But I have already observed above how a sort of inequity was committed in depriving Plff of the whole land over which he had expended so much labour and cost. Both the Village Panchayat and Plff could both have been very well accommodated if the Collector had taken a little lenient view. Further the law also deprives Plff of any compensation in that behalf Under these unfortunate circumstances, it would not be fair to punish the already punished Plff with costs. So what seems to be the fairest order is to make no order as to costs in the case. But it is submitted on the part of the Village Panchayat that it was an unnecessary party and it had to incur legal costs by the action of the Plff in bringing it to Court and so its costs should be awarded. No doubt the Village Panchayat was not a necessary party to the suit but all the same it could not be called an improper party in-asmuch-as it was the immediate grantee of the plot under the Collector's order. The Village Sarpanch, who was examined, states that he did not care to reply to Plffs notice given prior to the suit. Had the Village Panchayat given any timely reply telling Plff that it had nothing to do with his claim then I do not think Plff probably would have made it a party True no doubt Plff has created a sort of muddle in this suit by seeking his reliefs against both the defendants inclusive of the Panchayat also. But in essence

the plaint reliefs were directed against the Government only. Under these circumstances and under the unfortunate circumstances of the case I am not prepared to award any costs to the Village Panchayat in this case. The result is I dismiss Plff's suit but make no order as to costs.

Order.

Suit dismissed. No order as to costs.

Sd.M.M.Shirkol,

11th February 1955.

Civil Judge, Senior Division.

To

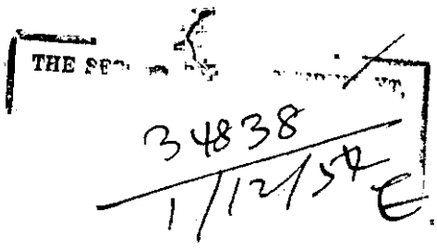
The Secretary to Government,
Revenue Department,
Bombay.

Humble application submitted by Nagappa Yegu Naik of Ankola.

Subject: O.S.No.205-1953 filed by me against the Government.

Respected Sir,

The suit referred to above had to be filed by me most reluctantly as my grievance was not redressed But recently I came to know that there was a move in the Revenue Department to give to the Village Panchayat the kacha road prepared by me between the suit land and the Fort of Ankola. A reference to the sketch drawn by the Commissioner appointed by the Court will show that I have brought under cultivation the major part of the area at a great cost. I have dug up the land to the extent of 5' to 3' depth. This fact has been reported by the Commissioner and has been valued by the Co Commissioner and the pandhas at Rs.1500/-. In addition this in the kacha road prepared by me there culver constructed by me. The cost of preparing this culvert a the kacha road have not been assessed by the panchas. The fact remains that I have spent about Rs.2000/- over this land, in dispute. I did not do it gratuitously. I did it in expectation that the land would be given to m under permanent tenancy according to the Grow More Food Campaign, although I may be wrong in my impression that the order given to me to occupy the land was in pursuan of my application for permanent tenure. The fact remain that my application for permanent tenure submitted by me in June 1949 was not rejected till 1-8-1952. Therefore the improvements were effected by me during this period. During the discussion of the case before the Court the suggestion to move for a compromise came up because the equities on my side. It may please be noted further that the Prant Officer has recorded my



statement recently after my application suggesting compromise submitted by me. From that proceeding it appears that the Prant Officer was of opinion that the kacha road prepared by me could be turned into a pakka road by the Village Panchayat and that it would serve their purpose. Whereas to prepare a road through the portion dug up by me would lead to unnecessary waste. The area dug up will have to be refilled. It will again require Rs.2000/- to do that. For a private party like me it cost me Rs.2000/- but for a local body or Government it may cost more. To construct such a road through the portion dug out by me would simply lead to frustrate the object of bringing such vast area under cultivation. Therefore whatever may be the merits of the case the fact remains that the kacha road prepared by me will serve the purpose of the village Panchayat. Secondly it will not serve the purpose of the Village Panchayat to construct a road through the portion dug out by me. These are the points to be considered in accepting my proposal for compromise. By retaining me in possession of the portion dug out by me and brought under cultivation by me the Government will be doing equitable justice to me. It will further save waste of Government grant for filling up the portion dug out. Government after all will loose nothing. So the suggestion for compromise may please be considered in this light.

I beg to remain,
Sir,

Yours obediently,

Ankola,
26-11-1954.

Copy forwarded with compliments for information to the R.L.A.Bombay with a prayer to consider the situation on equitable grounds.

REVENUE DEPARTMENT
File No. 0
-3 DEC 1954
Serial No. 21393

Remarks of the R.D. may be called for on the above letter

R.R. to R.D No 27437/E dt 2-12-54.

3

Approach road prepared by the Village Panchayat
Area dug out to the extent of 5' to 3' depth and brought under cultivation.
K a c h a R o a d
T. R O A D

KD/P 91

Submitted

This may be returned with the KD remarks that the Collr's report has been called for in the matter

24/1/55

L.D. 28 JAN 1955 E

Glw 24.1.55

[illegible] to the L.D. dt 27.1.55.

2913

12

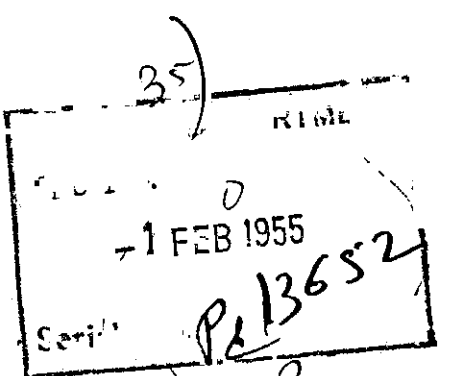
10-1-53

Submitted with reference to the
ND note overleaf

Nec Deptt may kee requested
to return these papers along
with its remarks on collection
reply to Med. Deptt

JK
29/

Sick (MS) hm
31-1



R

U.R. to RD OM 2393/Ed-1/2/55 & chase l. of PE. return
& LO to L.D.
1.1.55
25/1/55

RA/P

93

Submitted

2 The Collr's report called for in the
on R.P. No. D.A. in letter may be expedited separately
C/130082 22/2/55
linked

Rs
22.2.55

RA/P

733 E
12/3/55

Sl. on the Collr's letter, dt 8.2.55; in the linked DP
No. of 130082/1[illegible]79-P, wherein he has stated that the compromise
has already been refused by the RA under his D.O. of 29.09.E, dt 31.12.54.
these DPs. may be returned to Collr DP. with the linked case.

7/3/55

7-3-55

10th March 1955

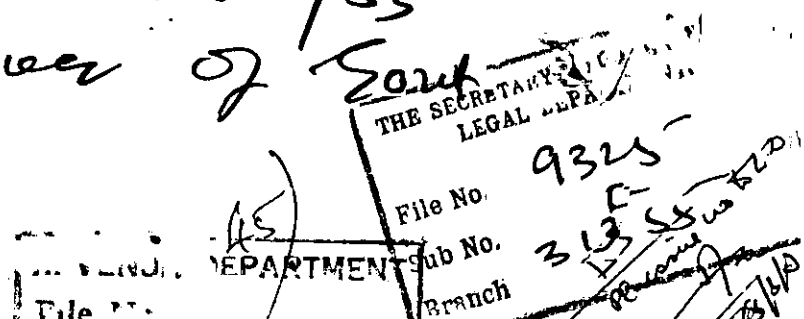
RD No 7332/E dt 12.3.55

The Revenue Dept. may be informed that CS No 205/53 is decided in favour of Govt on 11.2.55

413

Sol (Rev) 53/

re RD No 5773-E dt 16-3-55



These Rfps. may be seen and returned to

Secy Revn Dept
26/3/55

Under the Govt dt 29th March 1955

RI No 7331 dt 12.3.55

C D

N. R to R.D No 5772/E dt 16/3

Please
bolg reference

L D

RI. No 7332 dt 12.3.55

N. R to R.D No 5773/E dt 16/3/55

LD

RI No 9305 Dt 31.3.58

M.R to RD No 7432-E Dt 7/4/58

Issued
RD
7/4

DI

7/4

Suits :

Kanara.

for a declaration that S. No. 160 of Shedgri in Ankola Taluka is held by him on a permanent tenure and not on temporary basis, and that the order passed by the Collector of Kanara, for the plaintiff's eviction from the said land is illegal, *ultra vires*, etc

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 27488/E.

Bombay Castle, 3rd December 1954.

Letter from the Collector of Kanara, No. O/C. 360, dated the 2nd December 1953—Forwarding the papers, in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), KARWAR.
CIVIL SUIT No. 205 OF 1953.

Nagappa Yegu Naik of Ankola ... ... Plaintiff;

versus

1. The State of Bombay ... ...
2. The Village Panchayat, Ankola ... ... } Defendants.

Memorandum to the District Government Pleader, Karwar, No. 13155/E, dated the 25th May 1954—Forwarding a copy of the brief with its accompaniments.

By order and in the name of the Governor of Bombay,

Original

for J. R. DHURANDHAR,
Secretary to Government.

A Leg. H 263—

[P.T.O.

To

The Revenue Department,
The Collector of Kanara,
The District Government Pleader. Karwar (with two copies of the brief).

*With a copy of the brief.

No. of 1954.

Copy forwarded for information and guidance to

KANARA CIVIL SUIT No. 205 OF 1953.

Chronological Statement of Facts.

Plaintiff Nagappa Yagu Naik of Ankola has filed this suit against the State of Bombay and the Village Panchayat of Ankola for (1) a declaration that Survey No. 160 of Shedgri in Ankola Taluka is held by him on a permanent tenure and not on temporary basis, (2) a declaration that the order passed by the Collector of Kanara and communicated to him by the Mamlatdar, on 27th January 1953 for the plaintiff's eviction from the said land is illegal, *ultra vires* etc., and (3) an injunction restraining the defendant from interfering with the plaintiff's possession and alternatively for payment to him of compensation of Rs. 2,000.

2. The suit land Survey No. 160 admeasuring 1 acre 19 gunthas and assessed at Re. 0-6-6 is Government waste land situate at village Shedegiri in taluka Ankola. It is shown on the sketch prepared on 20th June 1949.

3. On 4th June 1949 the plaintiff submitted an application to the Mamlatdar, Ankola, for grant of the said land to him for cultivation on temporary basis. The Mamlatdar granted the said land to him for one year and the plaintiff signed a *Kabulayat* on 5th June 1949, agreeing to hold and cultivate the said land up to 31st March 1950, subject to the condition that a margin of 10' in width should be left on one side as a public path. Plaintiff also seems to have submitted an application to the Prant Officer on 7th June 1949 for permanent grant of the said land to him. Plaintiff alleges in paragraph 4 of the plaint that on 21st June 1949 the Mamlatdar issued an order informing the plaintiff that the said land had been granted to him on condition that he should leave a path of 10' wide for use of the public. No office copy of such an order is found in the record. If the order is proved, it was presumably an order granting permission for the temporary occupation of the said land to him.

4. An enquiry was however started in respect of the plaintiff's application dated 7th June 1949 and the Mamlatdar submitted a report to the Prant Officer, Kanara Division, Kanara, on 16th July 1949 recommending the grant of the said Survey No. to the plaintiff on conditions stated in the report. In the meantime on 13th June 1949, the Sar Panch of the village panchayat forwarded to the Mamlatdar an application signed by the villagers, opposing the grant of the said land to the plaintiff. On 14th June 1949 the Mamlatdar made a note on the application to the effect that the opposition to the grant was not reasonable. On 22nd June 1949 the Mamlatdar recommended the grant of the land to the plaintiff. The Prant Officer, by his endorsement dated 25th June 1949 supported the Mamlatdar's recommendation. On 14th August 1949 one Deka *alias* Hamappa T. Naik submitted an application to the Collector opposing the grant of the said land to the plaintiff and requesting the grant to him of the said land. This was referred to the Mamlatdar, for report. The Mamlatdar submitted a report on 19th September 1949 reiterating his previous recommendation to grant

the said land to the plaintiff to whom the same had been leased on an yearly lease. The Prant Officer in his endorsement dated 7th October 1949 agreed with the Mamlatdar. On 30th November 1949 the Collector passed an order rejecting the requests of the Sar Panch and Shri Deka *alias* H. T. Naik for cancelling the Eksali grant made in favour of the plaintiff and directed that the said survey number should be disposed of for raising food crops in accordance with the order contained in Government Resolution, Revenue Department, No. 366/33, dated 10th March 1947. The Prant Officer in his endorsement dated 5th December 1949, forwarding the said order of the Collector asked the Mamlatdar to submit the revised proposals for final orders. But it seems that no proposals for final disposal of the said land were submitted and, therefore, no final orders were passed granting the said land to the plaintiff. The malki remained at that state till April 1951. The Eksali lease of the said land granted to the plaintiff on 5th June 1949 which expired on 31st March 1950 was also not renewed thereafter. The possession of the plaintiff of the said land thereafter was unauthorised.

5. On 19th April 1951 one J. K. Naik submitted an application protesting against the grant of the said land to the plaintiff. On 11th January 1952 the Mamlatdar submitted a report recommending the grant of the said land to the plaintiff subject to condition stated in the report dated 16th July 1949. The Mamlatdar further recommended that as the said land was in unauthorised possession of the plaintiff during the years 1950-51 and 1951-52 the assessment and fine as recommended by him should be recovered from the plaintiff.

6. On 9th December 1951 the Sar Panch again objected to the grant of the land as it was required by the Panchayat for the purpose of constructing a road. On 16th March 1952 the Mamlatdar submitted a report for reasons stated by him recommending that the said land should not be granted to the plaintiff and that if any order was already passed it should be cancelled. The Prant Officer in his endorsement dated 30th April 1952 agreed with the Mamlatdar. The Collector accordingly on 16th July 1952 passed an order directing that the land should not be granted to the plaintiff as it was required for a public purpose and directed the Mamlatdar to levy assessment and fine under section 61 of the Land Revenue Code from the plaintiff in respect of the unauthorised occupation of the said land by him during 1950-51 and 1951-52. The District Government Pleader is requested to ascertain from the Collector the exact date on which this order was communicated to the plaintiff. On 22nd July 1952 the Mamlatdar passed an order directing that fine of Rs. 5 should be recovered from the plaintiff for unauthorised occupation and cultivation by him of the said land during 1950-51 and 1951-52.

7. On 28th July 1952 the plaintiff submitted a petition to Honourable Minister, Revenue Department, for cancelling the Collector's order and granting him the said land on permanent basis. His petition was rejected by Government on 20th November 1952.

8. Plaintiff gave a notice of suit on 8th April 1953 and filed this suit on 7th October 1953.

Grounds of Defence.

Limitation.—The order passed by the Collector of Kanara, on 16th July 1952, refusing to grant the suit land to the plaintiff is quite legal, valid and *intra vires*, the Collector and plaintiff cannot get the reliefs he seeks unless that order is set aside. The District Government Pleader, is requested to ascertain the date on which the plaintiff was informed of that order. In any event the plaintiff has been informed of the order before 28th July 1952 as will be evident from paragraph 4 of his petition to Honourable Minister, Revenue Department, submitted on that date for setting aside the Collector's order and for granting him the said land. Plaintiff has filed this suit on 7th October 1953. The suit is therefore, barred under article 14 of the Indian Limitation Act. Time lost by the plaintiff in pursuing a petition to the Government cannot be excluded from the period prescribed under article 14 (*vide* 44 Bom. 451).

2. *No cause of action.*—Looking to paragraph 17 of the plaint it will be seen that plaintiff has purposely avoided to state the date on which the alleged cause of action arose. In fact the plaint reveals no cause of action. On 7th June 1949 the plaintiff no doubt submitted an application for grant to him of the suit land on permanent tenure. But the plaintiff's request was never granted and finally on 16th July 1952 the Collector rejected the plaintiff's request. Plaintiff was granted an Eksali lease of the said land on 5th June 1949 for one year, i.e., up to 31st March 1950. Thereafter the lease was neither renewed nor any grant on permanent basis was made to him. Despite this plaintiff continued to occupy the land unauthorisedly during 1950-51 and 1951-52.

3. Main contention of the plaintiff as stated in paragraph 4 of the plaint is as follows:—

On 7th June 1949 the plaintiff applied for grant of the said land to him on permanent tenure and on 21st June 1949 the Mamlatdar informed him that the said land has been granted to him on condition that he should leave a path 10′ wide for the use of the public. The plaintiff therefore contends that he took it for granted that the said land has been permanently granted to him. This contention of the plaintiff is, *ex-facie*, not true and should be denied. In the first place office copy of the letter alleged to have been written to the plaintiff on 21st June 1949 by the Mamlatdar is not found in the Government record. Even assuming without admitting that such a letter was sent by the Mamlatdar on 21st June 1949 it cannot be interpreted to mean that the plaintiff's request for grant of the said land on permanent tenure made in his application, dated 7th June 1949 was granted. According to plaintiff's own averments in paragraph 4 of the plaint, the said order was issued under rule 54 and was in printed form (KK). Section 60 of the Bombay Land Revenue Code provides that any person desirous of taking up unoccupied land which has not been alienated must, previously to entering upon occupation obtain the permission in writing of the Mamlatdar or Mahalkari. Rule 54 of the Bombay Land Revenue Rules

provides that the permission in writing to be given by a Mamlatdar under section 60 to enable an intending occupant to enter upon occupation, shall be in form K or KK. Under Administrative order No. XXV (*vide* below Rule 54) no such permission shall be given until the Mamlatdar has ascertained that either a lease or an agreement has been duly executed and delivered under one of the Rules 37 to 47, 51 or 52 as the case may be. Plaintiff has applied for the grant of land on a temporary basis on 4th June 1949 and the request was granted and he executed a *Kabulayat* on 5th June 1949. The permission, if any, therefore, conveyed to plaintiff on 21st June 1949 in printed form No. KK is referable to the plaintiff's application dated 4th June 1949 and to the *Kabulayat* signed by him on 5th June 1949. It was not an order sent to him in reply to his application dated 7th June 1949 for the grant of the said land on permanent tenure. This is also evident from the fact that enquiry was separately started in the matter of the plaintiff's application dated 7th June 1949 and a report was submitted by the Mamlatdar on 16th July 1949, and orders could not have been passed on 21st June 1949 in the matter. It should also be urged that the said order dated 21st June 1949 does not refer to the application of the plaintiff submitted on 7th June 1949. Plaintiff contends that the said order does not mention a temporary lease and, hence he thought that the land had been granted to him on permanent tenure. This contention is also not true. The reply in form KK in which the communication of 21st June 1949 was made to the plaintiff, was simply meant for conveying the Mamlatdar's permission for occupying the land. The period of occupancy and terms and conditions etc. were stated in the *Kabulayat*, dated 5th June 1949. It was, therefore, unnecessary to state the period in the said communication, dated 21st June 1949.

4. Plaintiff then contends that he submitted an application on 7th June 1949 for granting him permanently the suit land and under section 65 of the Land Revenue Code as the Collector failed to inform him of the decision within a period of 3 months; the permission applied for should be deemed to have been granted. This contention of the plaintiff is quite misconceived. Section 65 of the Land Revenue Code has no application in the matter. That section is applicable to the case of an occupant of an agricultural land applying for permission to use his holding for any purpose other than agricultural. In the present case plaintiff applied for grant of unoccupied Government land. Such applications fall under sections 62 and 60 of the Bombay Land Revenue Code.

5. Facts stated in paragraph 5 regarding the improvements made by the plaintiff appear to be partially correct. Plaintiff however suggests that he effected the said improvements under the impression that the plot had been granted to him on permanent basis and that the defendant No. 1 acquiesced in and confirmed this impression. This suggestion of the plaintiff is not true and should be denied. The District Government Pleader is requested to ascertain the dates of major improvements made by the plaintiff. The lease granted to him was for one year only

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expiring on 31st March 1950. Plaintiff was the best judge to consider whether and what improvements should be made in the land expressly granted to him on yearly lease. If the improvements were found to have been made after expiration of the period of the lease, the plaintiff's occupancy of the suit land not being legal and authorised he was not entitled to make any improvements and if he made any, it was at his risk. Government would not, therefore, be liable to pay compensation for improvements even if proved.

6. Plaintiff next contends that he was granted Tagavi loan for purchasing bullocks, seeds, etc., a fact which shows that the land was granted to him on permanent basis. It should be stated in the first instance that there is no record to show that any Tagavi loan was granted to the plaintiff. Even if it is proved that plaintiff had been granted such a loan that does not prove that the suit land was granted to him permanently. Such loan, if any, was presumably given to him because he happened to be an actual cultivator. Plaintiff then contends that he spent more than Rs. 2,000 for the said improvements. This is not true. A Panch valuation was subsequently made. The District Government Pleader is requested to ascertain the date. The Panch valuation showed that plaintiff had not spent a sum exceeding Rs. 500 on the said improvements. In any case plaintiff had been granted the land for one year only and the period of lease expired on 31st March 1950. The land was not granted to him subsequently either temporarily or permanently. It, however, appears that plaintiff continued in the occupation of the said land unauthorisedly. Plaintiff cannot, therefore, make any claim to the said land on the basis of the amount alleged to have been spent by him or claim any damages for the loss of amount spent by him in the improvements of the suit land to which he had no claim and of which he was not a *bona fide* holder.

7. Plaintiff avers in paragraphs 6 and 7 that the said lands were continued in his possession during 1950-51 and 1951-52 when he effected some further improvements and cultivated the land without any objection from the defendant. The plaintiff proceeds to state that these facts confirmed his impression that the said land had been granted to him on permanent basis. The facts stated by the plaintiff and the inferences drawn by him are not correct. The plaintiff was in unauthorised possession of the suit land after 31st March 1950. Plaintiff himself was or ought to have been aware of the fact that he had not executed a fresh *Kabulayat* after expiration of the period of the Eksali *Kabulayat* executed by him on 5th June 1949. Nor had any order been passed granting him the said land temporarily or otherwise. As his application for permanent grant of the said land was under consideration perhaps no action was taken to evict him. The District Government Pleader, is however, requested to ascertain the circumstances under which the plaintiff was allowed to cultivate the land unauthorisedly.

8. Plaintiff next attacks the order on the ground that the said land is not genuinely required for a public road and the margin of 10′ left by him is sufficient for any such purpose. At the outset it should be urged that no person can claim a right to the grant of

any unoccupied Government land. It is absolutely a matter of discretion of Government whether to grant or reject a request for grant of such land. Secondly land is genuinely required for a public road by the Panchayat. It is true that at present there is no public road passing through this land but only a foot path of about 10′ wide. However, it is necessary to turn the said foot path into a pakka road for public purposes and the whole survey number is earmarked for the use of the Village Panchayat. According to the report of the Mamlatdar an area of about 30′ in width is required for construction of a pakka road. Plaintiff's contention that only a road of 10′ in width at the border of the survey number would be sufficient for the purpose is not tenable. Moreover, there is the ditch of the old fort to the south of the land and construction of a road just at the edge would be both unsafe for the public and expensive. If a pakka road is constructed it will require an area of about 25 gunthas and the remaining area will hardly be sufficient for cultivation. It should further be urged that plaintiff cannot take upon himself the right to judge the *bona fides* or otherwise of the requirements of the Panchayat. The Collector was the officer authorised in the matter and he has passed an order after convincing himself of the genuine requirements of the Panchayats. The order passed by the Collector is thus quite legal and valid.

9. Plaintiff is claiming the damages of Rs. 2,000. It should be urged that plaintiff's claim is both misconceived and excessive. No wrong has been done to the plaintiff in rejecting his application for permanent grant of the suit land. The said land was avowedly granted only for one year on 5th June 1949. The period expired on 30th March 1950. Thereafter no order was passed either granting the land temporarily or permanently nor has the plaintiff executed any *Kabulayat*. Plaintiff's occupation and cultivation of the said land was thus unauthorized after 30th March 1950. He cannot claim, therefore, damages for any improvements effected by him. Such a claim is tantamount to taking advantage of his own wrong. It should further be pointed out that the amount of claim of Rs. 2,000 is excessive. According to the Panch estimate the plaintiff has not spent more than Rs. 500. However, the plaintiff is not entitled to claim even this or any smaller amount whatsoever from the defendant.

10. For all the reasons stated above, it should be urged that the plaintiff's suit fails and deserves to be dismissed with costs.

Suits:
Kanara.
For a declaration that S. No. 160 of Shedgri in Ankola Taluka is held by him on a permanent tenure and not on temporary basis, and that the order passed by the Collector of Kanara, for the plaintiff's eviction from the said land is illegal, ultra vires, etc

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 10987/E
New Secretariat, Foreshore Road,
Bombay, 26th May 1955.

Read Government Resolution, Legal Department No. 27488/E, dated the 3rd December 1954.

Letter from the District Government Pleader, Kanara No. 178 dated the 2nd March 1955, stating that the suit noted in the margin was deicded by the Civil Judge, Senior Division, Karwar on the 11th February 1955, when the following order was passed:-

In the Court of the Civil Judge (Senior Division), Karwar.	
Civil Suit No. 205 of 1953.	
Nagappa Yegu Naik of Ankola.....Plaintiff;	
Vs.	
1. The State of Bombay..... 2. The Village Panchayat, Ankola..} Defendants.	

"Suit dismissed. No order as to costs."

Letter from the District Government Pleader, Kanara No. 178, dated the 2nd March 1955, forwarding uncertified copies of the judgment.

RESOLUTION:- The result of the suit is recorded.

By order and in the name of the Governor of Bombay,

23/5

D. P. Shikhare
Deputy Secretary to Government.

Original

To

The Revenue Department,

The Collector of Kanara,

The District Government Pleader, Kanara. (Karwar)

Submitted for Signature.

TKM/21.5. 23/5

D.S. (Civil)

Suits: Kanara.

For a declaration that S.No.160 of Shedgri in Ankola Taluka is held by him on a permanent tenure and not on temporary basis, and that the order passed by the Collector of Kanara, for the plaintiff's eviction from the said land is illegal, ultra vires, etc.

GOVERNMENT OF BOMBAY.
Legal Department,
Corrigendum No. 14353/E
Sachivalaya, Bombay, 21th June 1956.

In Government Resolution, Legal Department No.27488/E, dated the 3rd December 1954, after para two specifying particulars of the memo to the District Government Pleader, the following shall be added:

"RESOLUTION:- Sanction is accorded to the defence of the suit on the lines of the accompanying brief."

By order and in the name of the
Governor of Bombay,

D. G. Palekar,
original Deputy Secretary to Government.

To

The Revenue Department, with ref to its U.R No. 9-1-57
The Collector of Kanara, Karwar,
The District Government Pleader, Kanara, Karwar.

Submitted for sign.

25/6

D.S 25/6

D.S. (civil) 26/6

Issued DSC 26/6

No. 456 of 1956.
Karwar, 5-6-1956.

From

The District Government Pleader,
Kanara, Karwar.

To

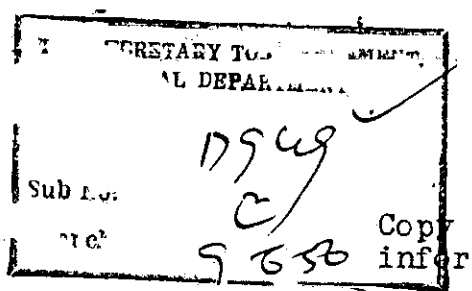
The Remembrancer of Legal Affairs,
Bombay.

Sir,

Civil Appeal No.68-1955 filed by Nagappa Yegu of Ankola against the State has been withdrawn by him yesterday. Hence it has been dismissed with costs.

Yours faithfully,

Dist.Govt.Pleader, Karwar.



Copy forwarded w.cs. to the Collector of Kanara, Karwar for information.

No. 13186/E 93

Office of the,
Remembrancer of Legal Affairs,
Sachivalaya, Bombay, 12th June 1956.

Subject: C.A.68 of 1955.

Memorandum:

With reference to his letter No.456 dated the 5th June 1956 on the above subject, District Government Pleader, Karwar is requested to state the No. and year of the suit in which the above appeal was filed.

o/c. MC

for Remembrancer of Legal Affairs.

To

The District Government Pleader,
Karwar.

DYDY2.

Issue PSC 12/6

Submitted for sign.

12/6

gs.

95.

No. 490 of 1956.
Karwar, 14-6-1956.

From

The District Government Pleader,
Kanara, Karwar.

To

The Remembrancer of Legal Affairs,
Bombay.

Sir;

With reference to your letter No.13186/E, dated 12th inst. I have the honour to state that the Civil Appeal No.68 of 1955 was filed from the decree in Civil Suit No.205-1953 of the Court of the Civil Judge, S.D., Karwar, (Nagappa Yegu Naik Vs.(1) State of Bombay & another).

Yours faithfully,

Dist.Govt.Pleader, Karwar.

L.D. 18 JUN 1956

THE SECRETARY TO GOVERNMENT,
LEGAL DEPARTMENT.
File No. 18814
Sub No. 19/61T6
Branch E

9L-

Submitted for information
file w S Ramaswamy 4/5/1

SR
21/6

Sdn me K put up previous papers.

21-6.

Submitted

Phs. are put up

file w S. Ramaswamy 4/56

Sd/- (M.M) 21-7